

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

In re:	§	
	§	
CORNERSTONE PRODUCTS, INC.,	§	Case No. 05-43533
	§	(Chapter 11)
Debtor.	§	
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	§	
BLOOM INDUSTRIES, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Adv. No. 07-4128
	§	
REGGIE SULLIVAN and SUNDANCE	§	
GENERAL, LLC,	§	
	§	
Defendants.	§	

**ORDER ON MOTION TO REMAND AND  
MOTION TO TRANFER VENUE**

Bloom Industries, Inc. ("Bloom") filed the original complaint in this action on January 23, 2007 in the Court of Common Pleas for Trumbull County, Ohio. The complaint lists causes of action for breach of contract and unjust enrichment, which are pleaded pursuant to state law. The defendants, Reggie Sullivan and Sundance General, LLC, removed the action to the United States District Court for the Northern District of Ohio, asserting that federal jurisdiction exists over Bloom's claims pursuant to the Bankruptcy Code. The defendants then filed a "Motion to Transfer Adversary Case to Another District" on March 15, 2007, and Bloom filed a "Motion to Remand to State Court" on March 16, 2007. The United States District Court for the Northern District of Ohio refrained from ruling on these matters and, instead, referred the proceeding to this Court in a "Memorandum Opinion and Order" entered on June 25, 2007.

This Court conducted a hearing on the pending motions August 14, 2007. Counsel for Bloom and the defendants appeared at the hearing and presented their arguments and legal authorities to the Court. At the conclusion of the hearing, the Court orally granted Bloom's motion to remand this proceeding to state court for the reasons stated on the record. The following constitutes a more detailed explanation of the Court's findings and conclusions.

### **BACKGROUND**

On July 5, 2005, Cornerstone Products, Inc. ("Cornerstone") initiated the main bankruptcy case associated with this adversary proceeding by filing a voluntary bankruptcy petition. Cornerstone was in the business of designing, manufacturing and marketing plastic container products, including indoor and outdoor waste containers, storage totes and bins, laundry baskets and hampers, and commercial trash cans. Prior to bankruptcy, Cornerstone outsourced a portion of its manufacturing work with outside contract molding partners. These firms used molds and plastic resin supplied by Cornerstone to make finished products.

Bloom was one of Cornerstone's contract molding partners. On August 2, 2005, Cornerstone brought Adversary No. 05-4147 against Bloom for turnover of inventory manufactured by Bloom and other contract molders and for violation of the automatic stay. Cornerstone and Bloom entered into a letter agreement dated August 3, 2005 for the disposition of inventory and products being stored in Bloom's warehouse in Ohio (the "First Settlement Agreement"). The First Settlement Agreement expressly reserved Bloom's right to charge a "reasonable storage fee" if the inventory remained in Bloom's possession for more than 30 days. The Court approved the First Settlement Agreement on October 14, 2005, and the adversary proceeding against Bloom was dismissed.

On October 21, 2005, Cornerstone initiated Adversary No. 05-4217 (the “Molder Adversary”) by suing Bloom and several other contract molding partners for, among other things, immediate turnover of all molds, resin, raw materials, inventory and finished goods in their possession. In March 2006, Cornerstone, First United Bank (“FUB”), and Bloom entered into a settlement agreement (the “Second Settlement Agreement”). Among other things, the Second Settlement Agreement resolved and released all of the claims asserted against Bloom in regard to the molds. The Court entered an order approving the Second Settlement Agreement on April 2, 2006, leaving only Cornerstone’s claim for turnover of the inventory and any resin in Bloom’s possession.

FUB asserted a security interest in all of Cornerstone’s inventory, molds, and other tangible assets to secure pre-petition loans that it and an affiliate had made to Cornerstone. Following negotiations between Cornerstone, FUB, and the creditors’ committee in December 2005, a settlement agreement (the “FUB Settlement”) was submitted to the Court for approval. The FUB Settlement provided that the automatic stay would be lifted as to all of FUB’s collateral, and that all such collateral would be assigned to FUB and then “to a company to be formed and owned by Reggie Sullivan or his designee (“Sullivan Liquidations”).” The Court entered its order on January 9, 2006 approving the FUB Settlement and lifting the stay on the transferred collateral. The FUB Settlement reserved to Mr. Sullivan 85% of any excess collections from the collateral after payment in full of FUB’s debt, with the remaining 15% reserved to the estate.

On January 9, 2006, Cornerstone filed its “Second Amended Plan” (the “Plan”) and “Second Amended Disclosure Statement.” Sections 10.01 and 10.02 of the Plan set forth the conditions under which certain causes of action belonging to Cornerstone would be pursued by

the Trust (as defined in and established by the Plan) and/or “Sullivan Liquidations.” The Plan defined “Sullivan Liquidations” at section 1.68, in relevant part, as “the company to be formed by Reggie Sullivan to fund the pursuit of the Specified Causes of Action ....” The Plan defined “Specified Causes of Action” at section 1.65, in relevant part, as “the Causes of Action by the Debtor or the Estate against any Contract Molder or Resin Supplier of the Debtor [.]”

On February 16, 2006, the Court entered an “Order Confirming Second Amended Plan of Liquidation for Cornerstone Products, Inc. as Modified.” The confirmed Plan expressly incorporated the FUB Settlement. However, by subsequent settlement dated June 27, 2006 between the Plan Trustee, Mr. Sullivan, Sundance, and FUB, the Plan Trustee relinquished the Plan Trust's 15% interest in the excess collections to Sundance.

In October 2006, after making oral requests to Sundance for payment of storage rental for the inventory, Bloom began invoicing Sundance for the monthly rental applicable to the space occupied by the inventory. In the state court complaint filed in January 2007, Bloom requested judgment in the sum of at least \$193,120 in accumulated rental charges for holding the inventory since September 2005. However, at the hearing before this Court on Bloom’s motion for remand, counsel for Bloom stated that Bloom is not seeking any rent from Sundance in this case prior to the time Sundance acquired the assets.

On February, 14, 2007, Bloom, Sundance, and the reorganized debtor entered into a letter agreement that finally settled and resolved the turnover claim asserted by Sundance (as the successor to Cornerstone) in connection with the Molder Action.<sup>1</sup> The letter agreement required Bloom to sell the inventory and remit the first \$10,000 in proceeds to Sundance. At the hearing

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<sup>1</sup> In November 2006, Sundance intervened in the Molder Action on the ground that it was the proper party in interest with respect to the property at issue. The Court approved Sundance’s substitution and joinder as a plaintiff. By order entered on December 11, 2006, the Court severed the claims against Bloom from the Molder Action and assigned these claims to separate adversary proceeding (Adversary No. 06-4254).

before this Court on Bloom's motion for remand, counsel for Bloom represented that the inventory was, in fact, sold in March 2007.

### ANALYSIS

Sundance and Reggie Sullivan assert that their removal of this action was proper for two reasons: (1) Bloom's claims are related to Cornerstone's bankruptcy case; and (2) the Ohio state court lacks personal jurisdiction over both of the defendants. Bloom asserts that neither ground supports federal jurisdiction and that the adversary proceeding should, therefore, be remanded to state court.

The party invoking the removal jurisdiction of federal courts bears the burden of establishing federal jurisdiction over the state court suit. *See Frank v. Bear Stearns & Co.*, 128 F.3d 919, 921-22 (5<sup>th</sup> Cir. 1997) (citing *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 365 (5<sup>th</sup> Cir. 1995)). The relevant federal removal statute, 28 U.S.C. §1452(a), allows a party to remove a pending state proceeding to a district court "if such district court has jurisdiction of such claim or cause of action under section 1334 of this title." Section 1334 provides federal district courts with "original but not exclusive jurisdiction of all civil proceedings arising under title 11 [of the United States Code], or arising in or related to cases under title 11." 28 U.S.C. §1334.<sup>2</sup>

However, after a debtor's reorganization plan has been confirmed, the bankruptcy estate and bankruptcy jurisdiction under §1334(b) cease to exist except for matters pertaining to the implementation or execution of the plan. *See Bank of Louisiana v. Craig's Stores of Tex., Inc.*,

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<sup>2</sup> Section 157 of Title 28 provides that "[e]ach district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district." Pursuant to the "Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc" entered on August 6, 1984, the United States District Court for the Eastern District of Texas has provided that all cases under title 11 or proceedings arising under title 11 or arising in or related to cases under title 11 are referred to the United States Bankruptcy Court for the Eastern District of Texas for consideration and resolution.

(*In re Craig's Stores of Tex., Inc.*) 266 F.3d 388, 390-91 (5<sup>th</sup> Cir. 2001). In *U.S. Brass Corp. v. Travelers Ins. Group (In re U.S. Brass Corp.)*, 301 F.3d 296 (5<sup>th</sup> Cir. 2002), the Fifth Circuit explained that:

[S]everal courts have adapted the broad “related to” test for application in postconfirmation disputes. Those courts find that a proceeding falls within the jurisdictional grant if it has a ‘conceivable effect on the debtor’s ability to consummate the confirmed plan . . . In the recent case of *In re Craig’s Stores of Texas, Inc.*, however, we rejected this expansive view in favor of a ‘more exacting theory’: ‘After a debtor’s reorganization plan has been confirmed, the debtor’s estate, and thus bankruptcy jurisdiction, ceases to exist, other than for matters pertaining to the implementation or execution of the plan.

*U.S. Brass*, 301 F.3d 296, 304 (quoting *Craig’s Stores*, 266 F.3d at 390-91)). At issue in *U.S. Brass* was a post-confirmation debtor’s request for court approval of a proposed agreement to liquidate claims through binding arbitration where the confirmed plan provided that the claims would be resolved in a court of competent jurisdiction and determined by settlement or final judgment. The Fifth Circuit noted that “[b]ankruptcy law will ultimately determine this dispute, and the outcome could affect the parties’ post-confirmation rights and responsibilities . . . this proceeding will certainly impact compliance with or completion of the reorganization plan. Consequently, the . . . motion pertains to the plan’s implementation or execution and therefore satisfies the *Craig’s Stores* test for post-confirmation jurisdiction.” *Id.* at 305.

Here, Bloom is seeking a judgment for rents due to it based on either contract or a theory of unjust enrichment. While this Court’s prior orders may form part of the factual basis of the parties’ dispute, state law will ultimately determine the outcome of that dispute. Inasmuch as the disputed rents accrued after the transfer of the inventory from the estate to Sundance and/or Reggie Sullivan, and the Court having approved a reorganization plan in February 2006, the Court concludes that there is not a close nexus between the claims asserted by Bloom and (i) this

bankruptcy case, (ii) the confirmed bankruptcy plan, or (iii) distributions to creditors under the confirmed plan. The Court, therefore, finds that it lacks jurisdiction to determine the merits of this litigation.

**IT IS THEREFORE ORDERED** that Bloom's "Motion to Remand to State Court" is hereby, **GRANTED** and this proceeding is hereby remanded to the Court of Common Pleas for Trumbell County, Ohio.

**IT IS FURTHER ORDERED** that the defendants' "Motion to Transfer Adversary Case to Another District" is hereby denied as **MOOT**.

Signed on 10/16/2007

*Brenda T. Rhoades* SD  
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HONORABLE BRENDA T. RHOADES,  
UNITED STATES BANKRUPTCY JUDGE